

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.

ATTORNEY FOR APPELLANT:

JILL M. ACKLIN
Westfield, Indiana

ATTORNEY FOR APPELLEE:

BARRY A. CHAMBERS
Department of Child Services
Indianapolis, Indiana

**IN THE
COURT OF APPEALS OF INDIANA**

MELISSA COLLETT,)	
)	
Appellant-Respondent,)	
)	
vs.)	No. 49A05-0609-JV-509
)	
MARION COUNTY DEPARTMENT OF)	
CHILD SERVICES,)	
)	
Appellee-Petitioner,)	
)	
and)	
)	
CHILD ADVOCATES, INC.,)	
)	
Appellee (Guardian ad Litem).)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Victoria Ransberger, Judge Pro-Tempore
Cause No. 49D09-0506-JT-024752

May 16, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAKER, Chief Judge

Appellant-respondent Melissa Collett appeals from the involuntary termination of her parental rights with respect to her minor children, D.M., C.C., and Z.C. Collett claims that the termination order must be set aside because appellee-petitioner Marion County Department of Child Services (DCS) failed to show that the conditions resulting in the children's removal would not have been remedied or that the continuation of the parent-child relationship posed a threat to the well-being of the children. Finding no error, we affirm the judgment of the trial court.

FACTS

Collett is the mother of D.M., C.C., and Z.C, whose dates of birth are February 4, 1995, October 4, 2003, and August 8, 2004, respectively. Raymond Morris is the alleged father of D.M. and Charles Cook is the alleged father of the other two children.

On August 17, 2004, a Child in Need of Services (CHINS) petition was filed as to all three children,¹ alleging that Collett and Cook were not providing a drug-free and stable home environment for the children. Z.C. tested positive for cocaine at birth, and it was established that both Collett and Cook were using cocaine when Collett was pregnant. The DCS also alleged that Collett was not providing C.C. with medication that had been prescribed for seizures and that Z.C. was not receiving the sustenance that he required following his premature birth. The children were found to be CHINS on October 28, 2004,

¹ Morris specifically consented for D.M. to be adopted by a relative. Appellant's App. p. 9.

and were removed from Collett's care. The DCS then placed the children with relatives or foster care parents. The children were not returned to Collett during the pendency of the proceedings.

The trial court ordered Collett to participate in various parenting and drug treatment programs that were designed to help her regain custody of the children. Collett failed to cooperate with counselors and to complete many of the programs that were offered. As a result, on June 28, 2005, the DCS filed a petition to terminate Collett's parental rights as to all of the children.

At a final hearing that was conducted on July 19 and 20 2006, Collett's home-based therapist recommended against Collett's reunification with the children. The evidence showed that Collett maintained employment as a dancer despite recommendations of her addictions counselor to leave that employment. The recommendation was made because Collett admitted that her coworkers and customers consumed drugs and alcohol at the business. Collett also made numerous excuses for the positive test results for cocaine usage, including that she was "around people using cocaine." *Id.* at 10. Although Collett completed one drug treatment program, she had to repeat that program because she tested positive for cocaine during her pregnancy with another child.² That child was also removed from Collett's custody in 2006. Collett has tested positive for cocaine three times since January 2006. Collett also admitted that she was "homeless or transient" from May 2004 through June 2005. Tr. p. 228.

During Collett's participation in the home-based parenting sessions, her counselor advised her to attend doctor appointments with C.C., so that she could learn about her son's special needs. However, Collett attended only three of the eight scheduled appointments. Also, while Collett participated in a twelve-step program for cocaine use, she continued to deny the extent of her drug addiction. At some point, Collett admitted that she was participating in drug treatment programs only to "get her kids back." Id. at 39-40, 106-07.

Following the hearing, the trial court entered an order on August 15, 2006, terminating Collett's parental rights as to D.M., C.C., and Z.C. She now appeals.

DISCUSSION AND DECISION

I. Standard of Review

We will not set aside the trial court's judgment terminating a parent-child relationship unless it is clearly erroneous. In re A.A.C., 682 N.E.2d 542, 544 (Ind. Ct. App. 1997). We neither reweigh the evidence nor judge the credibility of witnesses. Id. We consider only the evidence that supports the trial court's decision and the reasonable inferences that may be drawn therefrom. Id. If the evidence and the inferences support the trial court's decision, we must affirm. In re L.S., D.S., and A.S., 717 N.E.2d 204, 208 (Ind. Ct. App. 1999).

II. Collett's Claims

Collett contends that the termination order must be set aside because the DCS failed to establish that the conditions resulting in the children's removal would not have been

² M.S.C. was born on March 21, 2006, during the pendency of the underlying CHINS case.

remedied or that the continuation of the parent child relationship posed a threat to the well-being of the children.

In addressing Collett's claims, we acknowledge that the involuntary termination of parental rights is the most extreme sanction that a court can impose on a parent because termination severs all rights of the parent to his or her children. Id. Therefore, termination is intended as a last resort, available only when all other reasonable efforts have failed. Id. The purpose of terminating parental rights is not to punish the parents but, instead, to protect their children. Id. Thus, although parental rights are of a constitutional dimension, the law provides for the termination of these rights when the parents are unable or unwilling to meet their parental responsibilities. Id.

To effect the involuntary termination of a parent-child relationship, the State must present clear and convincing evidence establishing that

(A) one (1) of the following exists:

- (i) the child has been removed from the parent for at least six (6) months under a dispositional decree;
- (ii) a court has entered a finding under IC 31-34-21-5.6 that reasonable efforts for family preservation or reunification are not required, including a description of the court's finding, the date of the finding, and the manner in which the finding was made; or
- (iii) after July 1, 1999, the child has been removed from the parent and has been under the supervision of a county office of family and children for at least fifteen (15) months of the most recent twenty-two (22) months;

(B) there is a reasonable probability that:

- (i) the conditions that resulted in the child's removal or the reasons

for placement outside the home of the parents will not be remedied; or

(ii) the continuation of the parent-child relationship poses a threat to the well-being of the child;

(C) termination is in the best interests of the child; and

(D) there is a satisfactory plan for the care and treatment of the child.

Ind. Code § 31-35-2-4(b)(2).

In construing this statute, this court has held that when determining whether certain conditions that led to the removal will be remedied, the trial court must judge the parent's fitness to care for his or her children at the time of the termination hearing. Matter of L.V.N., 799 N.E.2d 63, 69 (Ind. Ct. App. 2003). A parent's habitual pattern of conduct must also be evaluated to determine the probability of future negative behavior. In re D.J., 755 N.E.2d 679, 684 (Ind. Ct. App. 2001). And the trial court need not wait until a child is irreversibly harmed such that his or her physical, mental, and social development are permanently impaired before terminating the parent-child relationship. Id.

Additionally, the trial court may consider the services offered as well as the parent's response to those services. Id. When determining what is in the best interests of the children, the interests of the parents are subordinate to those of the child. Ferbert v. Marion County OFC, 743 N.E.2d 766, 773 (Ind. Ct. App. 2001). Thus, parental rights will be terminated when it is no longer in the child's best interests to maintain the relationship. In re B.D.J., 728 N.E.2d 195, 200 (Ind. Ct. App. 2000). The best interests of the child are the ultimate concern in termination proceedings. That is, children need not suffer emotional or

psychological harm or instability in order to preserve parental rights. In re L.S., 717 N.E.2d at 210.

In this case, the evidence showed that Collett is addicted to cocaine and that she associates with drug users. Throughout the pendency of the CHINS and termination proceedings, Collett has lived and worked in a “drug environment.” Tr. p. 20-21, 39, 42-45, 50, 65, 116, 204, 208-09, 261, 265-67. As noted above, Collett worked as a dancer in “a place where there [are] alcohol and drugs.” Id. at 39. The evidence also showed that Collett had a history of unstable housing and that she did not have a permanent residence for nearly a year. Id. at 228. Collett acknowledged that she had moved approximately ten times in a one-year period. Id.

Although Collett did engage in some court-ordered drug treatment programs, she failed to participate in aftercare sessions. Moreover, Collett continued to deny abusing cocaine even in the face of positive drug tests. Collett also relapsed while participating in treatment, and she admitted to swallowing a bag of cocaine in May or June 2006. Id. at 20, 37-40, 43-45, 59, 106-07, 156, 241 264. The evidence clearly established that Collett failed to take advantage of the services that were offered to her to overcome her addiction problems. More specifically, the evidence showed that Collett failed to successfully complete mental health treatment, intensive outpatient drug treatment, aftercare, and home-based counseling. In light of this evidence, the trial court reasonably concluded that the DCS

proved that Collett had not remedied her drug problem and had failed to establish a suitable and stable home for her children.³

In sum, when considering the above and recognizing that the trial court heard the testimony of all of the witnesses at the final hearing, observed their demeanor, and judged their credibility, as a reviewing court, we give proper deference to the trial court. Hence, we conclude that the DCS presented clear and convincing evidence that Collett's parental rights should be terminated pursuant to Indiana Code section 31-35-2-4.

The judgment of the trial court is affirmed.

FRIEDLANDER, J., and CRONE, J., concur.

³ In light of our discussion above, we need not address whether the DCS proved that the continuation of the parent-child relationship posed a threat to the well-being of Collett's children because Indiana Code section 31-35-2-4(b)(2)(B) requires the DCS to prove that there is a reasonable probability that the conditions that resulted in the child's removal will not be remedied or that "the continuation of the parent-child relationship poses a threat to the well-being of the child."